

Legal Services Corporation

§ 1628.3

annualized grant amount may be obtained under certain conditions as described in § 1628.3(d). Funds carried over in excess of 10% or above the level permitted by a specific waiver will be recovered as set forth in section 1628.3(a).

§ 1628.2 Definitions.

(a) LSC *support* for the reporting period shall be defined as the sum of: (1) The annualized LSC grant award(s);

(2) Any additional income derived from an LSC grant (interest, rents, etc.); and

(3) That proportion of any reimbursement or recovery of direct payment to attorneys, proceeds from the sale of assets, or other compensation or income attributable to any Corporation grant.

(b) The LSC *fund balance amount* shall be determined solely by reference to the recipient's annual audit. (The fund balance reported in the recipient's annual audit is subject to review and approval by the Corporation's Audit Division. Noncompliance with provisions of the Corporation's *Audit and Accounting Guide for Recipients and Auditors* may result in an increase or decrease in the fund balance as reported in the audit.)

(c) The *fund balance percentage* shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the reporting period.

(d) *Recipient* as used in this part, means any recipient as defined in section 1002(6) of the LSC Act and any grantee or contractor receiving funds from the Corporation under section 1006(a)(1) or 1006(a)(3) of the Act.

§ 1628.3 Policy.

(a) In the absence of a waiver from the Director, Office of Field Services, any fund balance amount in excess of 10% of LSC support shall be repaid to the Corporation in a lump sum or by pro rata deductions from the recipient's grant checks for a specific number of months. The Office of Field Services shall determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) After the Corporation's receipt and review of the recipient's annual audit, the Corporation shall provide

written notice to the recipient of the fund balance amount due and payable to the Corporation as well as the method for repayment 30 days prior to the effective date for repayment either to occur or to commence in accordance with § 1628.3(a).

(c) In no way shall any such reduction and/or deduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction and/or deduction in LSC support be considered to be a termination or denial of refunding under 45 CFR 1606 and 1625 respectively.

(d) A waiver of the 10% ceiling may be granted at the discretion of the Corporation in extraordinary circumstances; such a waiver may be granted by the Corporation to extend the ceiling for fund balance amounts established under this regulation to a maximum of 25% of LSC support. Further, in addition to the established 10% ceiling, the Corporation shall grant a waiver up to 25% of direct payment to attorneys in the last audit to recipients who operate compensated private bar programs or components to be utilized exclusively to fund a cash reserve or encumbrance system for direct payment to attorneys. Such recipients must submit a timely written request to the Office of Field Services to obtain this waiver. However, under no circumstances will a recipient be allowed to retain a fund balance in excess of 25% of support.

(e) All one-time or special purpose grants awarded by the Corporation shall have an effective date and termination date. Such grants are not subject to this fund balance policy. Revenue and expenses relating to such grants must be reflected separately in the audit report submitted to the Corporation. This may be done by establishing a separate fund or by providing a separate supplemental schedule of revenue and expenses related to such grants as a part of the audit report. No funds provided under a one-time or special purpose grant may be expended subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.